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Paper No. 8

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JUN 06 2003

In re Application of :  
Knox et al : OFFICE OF PETITIONS  
Application No. 10/073,575 :  
Filed: February 12, 2002 : ON PETITION  
Attorney Docket No. :

This is a decision on the petition under 37 CFR 1.137(b), filed April 14, 2003, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." No additional fee is required with any renewed petition. Petitioner is advised that this is **not** a final agency action decision.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed August 27, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on November 28, 2002.

A grantable petition to revive an abandoned application under 37 CFR 1.137(b) must be accompanied by: (1) the required reply (unless previously filed), which may met by the filing of a continuing application in a nonprovisional application abandoned for failure to prosecute, but must be the payment of the issue fee or any outstanding balance thereof in an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing

of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)). This petition lacks item (1) above.

A petition to revive cannot be granted where there is an outstanding requirement. In the instant case, there was no response to the outstanding official action submitted. Accordingly, the petition to revive cannot be granted until such time as the outstanding response requirement is received.

37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. If the statement contained in the instant petition varies from the language required by 37 CFR 1.137(b)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.137(b)(3) and petitioner must notify the Office if this is **not** a correct interpretation of the statement contained in the instant petition.


Further correspondence with respect to this matter should be addressed as follows:

**By mail:** Mail Stop PETITION  
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Attn: Office of Petitions

Telephone inquiries concerning this decision should be directed to Wan Laymon at (703) 306-5685.

  
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Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy